HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI

A N D

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeal Nos.2106 & 2112 of 2002 And 167 of 2003

Dated: 20th September 2005

Between:

The District Collector, Hyderabad District,

Nampally Road, Hyderabad and another … Appellants

And

Mr.Rashid Khushro Battiwala and

Three others rep. By their G.P.A. Mr.P.A. Nalladaru

… Respondents.

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Common Judgment: (per the Hon'ble the Acting Chief Justice)

1. The respondents herein filed three writ petitions. In W.P.No.18021 of 1999 direction was sought that respondent No.1 be directed to record

the name of the petitioners as owners in Town Survey Records and consequently declare that the direction of respondent No.1 to the Commissioner and Special Officer, Municipal Corporation of Hyderabad (M.C.H.), Vice-Chairman, Hyderabd Urban Development Authority (HUDA), and Sub-Registrar, Banjara Hills, Hyderabad asking them not to grant permission for construction, change of land use, and not to register documents, as illegal, void and without jurisdiction. Writ Petition No.9164 of 2000 was filed seeking appropriate directions against the respondent—authorities from interfering with the peaceful enjoyment of the property being Plot No.3 by the petitioners. Writ Petition No.23830 of 2001 was filed to issue No Objection Certificate (NoC) in their favour. All the writ petitions were allowed by a common order dated 29-8-2002 and the present appeals were filed by the District Collector, Hyderabad.

2. We have heard the learned counsel for the parties.

3. The case of the respondents—writ petitioners was that they were owners and possessors of different extents of land in Plot No.3 of Jubilee Hills Municipality measuring Ac.2-12 guntas, and the District Collector through his letter Lr.No.11/6053/1998 dated 24-12-1998 issued direction to Commissioner and Special Officer, Municipal Corporation of Hyderabad, Vice-Chairman, Hyderabad Urban Development Authority, and Sub-Registrar, Banjara Hills, Hyderabad in respect of the above land not to grant permission for change of land use and not to register the documents pertaining to the above land observing that the said land was declared as surplus land and parties have not established their rights to the said Plot No.3 of defunct Jubilee Hills Municipality.

4. We have seen the record and perused the order of the learned single Judge. At any stage, the Government has claimed that this land belongs to it. In this connection, finding of the learned single Judge is reproduced hereunder, which is not even disputed by the learned Government Pleader appearing in the appeals.

> But the prime question that calls for consideration is whether the

Government has got any interest in the land in question. Except stating that an extent of Ac.2-12 guntas is forming part of the land which is being claimed by Padmavathi and which matter is pending before the Supreme Court, no other documents are forthcoming from the Government to sustain the contention of the Government that the land belongs to it. In fact, in the counters filed by the Government at various stages, in all these writ petitions, it clearly show that the said land was allotted to one Abdulla Pasha and the same was sold ultimately to the petitioners in 1967 and the said allotment of land was recognized and it was found genuine by the authorities. The only ground on which the directions issued by the Collector was that there are disputes inter se between the petitioners and third parties and that the petitioners were declared to be holding surplus in excess of ceiling limit. It is to be noted that as far as the petitioners being declared as surplus landholders under the provisions of Urban land Ceiling Act is concerned, it is open for the Government to proceed against the petitioners in accordance with the provisions of the Act. But, nonetheless, it would not lie in the mouth of the Government to say that the land belongs to it. Having accepted that the land was covered by Plot No.3 in an extent of Ac.2-12 guntas and the said allotment was found to be genuine as per the enquiry made by the Collector and as per the Memo issued by the Government, it cannot be said that it is a Government land and that the Government has any interest in that land. If there are inter se disputes between the petitioners and third parties, it is for the parties to secure their titles and interests before the appropriate Court and it would not be appropriate for the Government to interfere in the disputes between the third parties and the petitioners. …

5. The learned Government Pleader has merely stated that a case with regard to the land in dispute is pending before the Supreme Court in which an order of stay has also been passed. According to him, one G. Padmavathi claims 8 acres of land in the same area and Plot No.3 is also part of that area. When this contention was raised by the learned Government Pleader, respondents herein moved an application for impleading Smt.G. Padmavathi as a respondent. Accordingly she was impleaded. Counter affidavit has also been filed by her. She has categorically stated that she had no claim or right over the extent of land measuring Ac.2-12 guntas in Plot No.3, Jubilee Hills Municipality situated at Road No.2, Banjara Hills, Hyderabad. She further stated that this land belongs to

late Abdulla Pasha and respondents 1 to 4 are the absolute owners and possessors of the said property. Since the land in question is neither claimed by the State nor by Smt. G. Padmavathi, whose matter is pending

before the Supreme Court, we do not see any merit in these appeals, which are accordingly dismissed.

(Bilal Nazki, ACJ)

(R. Subhash Reddy, J)

20th September 2005.

svs